COMMENTS OF THE NEW JERSEY PRESS ASSOCIATION IN SUPPORT OF THE PETITION FOR DECLARATORY RULING FILED BY AMERICAN TELESERVICES ASSOCIATION, INC., CG DOCKET NO. 02-078, DA 04-3185.

The New Jersey Press Association ("NJPA") is a not-for-profit corporation established in 1857. It is composed of all of the daily newspapers published in New Jersey and over 160 weekly newspapers. The petition of the American Teleservices Association, Inc. ("ATA") points out the problems the NJPA membership has encountered in attempting to harmonize its compliance with the federal and state Do-Not-Call regulations.

A. Newspapers Play A Particularly Important Rule In Informing New Jersey Citizens.

Newspapers occupy a unique position in today's society as the chief source of local, political and community news. No other media covers the local council meeting, the school board, the planning board meeting and other similar local news as thoroughly as a newspaper. In a 2003 American Opinion Research Survey, 51% of New Jersey residents stated that newspapers are their main source of New Jersey political and election news while 37% identified TV as their main source for such information and only 6% identified radio. There is no substitute for the coverage provided by New Jersey newspapers. They are the primary means of access to local legal notices. Vendors seeking to sell their products to governmental entities look first to the legal advertisements to determine on which contracts they may submit bids. Newspaper coverage and newspaper advertisements are the manner in which local officials, communities and candidates often communicate with their constituents. Surrounded as we are by New York and Philadelphia, television news broadcast from these cities concentrates heavily on National and metropolitan events. 77% of New Jersey adult residents read a newspaper in a given week and 73% of New Jersey adult residents read the Sunday edition of a newspaper. This translates to approximately 5 million New Jersey adults reading newspapers. [American Opinion Research 2003; Scarborough Research 2001 Release 1 (Top 50 Market Report)]

Newspapers, through their classified and display advertising sections, act both as the starter and continuing fuel for the economic engine of our state. They are the primary vehicle sellers of homes, furniture for those homes, cars, and all sorts of merchandise sellers use to reach their customers. New Jersey businesses generally rely on newspapers to contact and inform their customers, both present and future, of their products and services, including the times of sales. Thus, newspapers play a critical role in the decisions of consumers as to if and when and what to purchase. This market place which is facilitated by the role of newspapers is an essential part of the economic engine that creates jobs for our citizens.

In order to continue to perform these vital functions, however, it is crucial that newspapers remain financially healthy. This requires newspapers to continually reach out to the community to sell as well as renew subscriptions in order to maintain subscriber levels. A newspaper subscription involves a continuing relationship between the paper and the subscriber. It is paid on a periodic basis, whether that be weekly, monthly or quarterly. It is a continuing relationship through the delivery of the paper involving daily contact, in the case of daily newspapers, or weekly contact, in the case of weekly newspapers.

In light of this, it is critical that newspapers be able to reach out to their customers who may have stopped receiving the paper for a wide variety of reasons. In the past, many of these contacts have been by telephone and were appreciated by the recipients, who elected to continue being subscribers. Telemarketing continues to be the most effective way of doing this and under the Federal Rules these calls are permitted, even if the person is on the National do not call list, absent a request by the recipient to be placed on a company specific Do Not Call List. However, where no money is owed on an account, New Jersey prohibits such calls when the person is on the National/State of New Jersey do not call list. Those who may not appreciate follow-up calls can place their telephone numbers on a company specific do-not-call list and thereby avoid any such calls.

Further, classified advertising, typically placed by private individuals, represents approximately 50% of the revenue of many small newspapers. There is a need on the part of the newspapers to contact advertisers who have placed classified ads to see if that advertiser desires to repeat the ad. Once again, telemarketing is critical to this process.

B. The New Jersey Regulations Purporting to Regulate Interstate Telephone Calls Improperly Interfere With Interstate Commerce, Burden Business And Frustrate The FCC Goal Of Uniformity Of Regulation.

In today’s technologically advanced society, where call centers out of state or even out of the country are not uncommon even newspapers circulating only within the State may employ out of state telemarketing businesses. These telemarketers then must have two sets of policies and procedures in place to satisfy the federal and the New Jersey regulations.

Too, situate as they are between the metropolitan areas of Philadelphia and New York, it is not unusual for NJPA member newspapers to circulate outside New Jersey. Indeed, New York and Philadelphia newspapers are or have been members of NJPA. Because the New Jersey restrictions on interstate telemarketing have different requirements than the Federal Rules they force some NJPA members, whether they make their own calls or employ a telemarketing service, to have in place two telemarketing policies and procedures, one for telemarketing entirely outside New Jersey and another for calls to and from New Jersey.

As ATA noted in its petition, this is precisely the situation the FCC sought to avoid in adopting the nationwide regulations.

> "Although section 227(e) gives states authority to impose more restrictive intrastate regulations, we believe that it was the clear intent of Congress generally to promote a uniform regulatory scheme under which telemarketers would not be subject to multiple, conflicting regulations. <u>We conclude that inconsistent interstate rules frustrate the federal objective of creating uniform National rules, to avoid burdensome compliance costs for telemarketers and potential consumer confusion</u>. The record in this proceeding supports the finding that application of inconsistent rules for those that telemarket on a nationwide or multi-state basis creates a substantial compliance burden for those entities.
>
> We therefore believe that any state regulation of interstate telemarketing calls that differs from our rules almost certainly would conflict with and

> frustrate the federal scheme and almost certainly would be preempted...We reiterate the interest in uniformity - as recognized by Congress - and encourage states to avoid subjecting telemarketers to inconsistent rules." [Emphasis added]. **68 Fed. Reg. at 44, 155.**

The New Jersey regulations, which purport to regulate interstate calls, all but eliminate the "established business relationship" and particularly veer off course in the quest for uniformity. This places an undue burden on all business and in particular on newspapers who are dependent on telemarketing. FCC pre-emption is necessary to avoid businesses having to have multiple rules and procedures for telemarketing in multiple states.

C. The Replacement Of An "Existing Business Relationship" With the "Existing Customer" Concept Represents A Radical Restriction On The Persons Who May Be Contacted By A Newspaper.

As the ATA correctly notes, the New Jersey regulations limit telemarketing calls only to persons with whom the newspaper is currently transacting business as "existing customers". An "existing customer" is defined as "a person who is obligated to make payments to a Seller on merchandise purchased" or "a person who has entered a written contract" where there remains an obligation to perform. Once full payment is made or the contract performed, the business is no longer permitted to telemarket the Purchaser if the Purchaser is on the

Do-Not-Call list. This places an unfair burden on business and creates practical problems for newspapers.

Residents stop delivery of their newspapers for a number of reasons. For example, some may move to warmer climates in the winter, others to mountain or shore communities for the summer. Under the New Jersey regulations, once delivery is stopped and payment made, the recipient of the newspaper is no longer an “existing customer”. Thus, a newspaper could not call the seasonal customer who is on the National/State of New Jersey do not call list to inquire if they wished to restart delivery at the beginning of the next season without running afoul of the New Jersey regulations. Under the federal regulations, of course, a seasonal customer would have an existing business relationship and a call is permissible, unless the customer’s number is on the company specific do not call list.

It is critical that newspapers be able to reach out to these customers. Traditionally, these contacts have been by telephone and were appreciated by the recipients, who elected to continue being subscribers. Telemarketing continues to be the most effective way of contacting these subscribers. Those who do not want follow-up calls can place their telephone numbers on a company specific do-not-call list and thereby avoid any calls.

There is also a need on the part of the newspapers to contact individual advertisers who have placed classified ads to determine if that person desires to repeat the ad. Such a follow-up call is within the definition of telemarketing and although such calls would be permissible under the federal regulations, they are prohibited in New Jersey

D. The New Jersey Requirement That A Company Specific Do-Not-Call Request Applies To Both The Entity Engaging The Telemarketer And The Telemarketing Business Unfairly Burdens Interstate Commerce.

The New Jersey regulations provide that a consumer who instructs a telemarketer to place that person's name on a company specific Do-Not-Call list automatically includes the telemarketing business as well as the entity that engaged the telemarketer. By this rule, for example, a customer could advise a telemarketer that it wishes to be placed on the company specific do-not-call list when the telemarketer contacts the customer on behalf of an insurance company and the telemarketer is thereby barred from calling on behalf of any other client.

This rule is adverse to telemarketing businesses, their clients and to consumers. A consumer who has no objection to receiving calls from some businesses but does not want calls from others may unknowingly place him or herself on multiple company specific calls lists. If the consumer wishes not to receive any calls she can place her name on the federal do-not-call list. But one who would permit some calls may be denied that right under New Jersey regulations by virtue of multiple businesses using the same telemarketer. This rule is unfair to unsuspecting customers and businesses and cripples the ability of National telemarketing firms to do business in New Jersey even when the telemarketer is in complete compliance with the federal rules.

E. Conclusion.

New Jersey newspapers are generally local businesses. They employ literally tens of thousands of New Jersey residents in roles such as publishers, editors and salespersons. As such, they are particularly sensitive to and reachable by, their subscribers. They are quick to accommodate and respect the privacy concerns of their subscribers; their survival depends upon it. These factors provide strong motivation for self-policing of telemarketing practices. The disparate federal and New Jersey regulations, however, make it a difficult task. If the states are permitted to adopt regulations substantially different from and more restrictive than the federal procedures, as New Jersey has done, the resulting patchwork of standards will make compliance impossible.

The NJPA supports ATA in seeking federal preemption of those excessive provisions of the New Jersey Consumer Fraud Act and New Jersey Rules applicable to interstate telemarketing to the extent they are more restrictive than the Commission Rules.